

§ 42.713

§ 42.713 Exception; reasonable factors other than age.

(a) A recipient may take an action, otherwise prohibited by § 42.710(a), that affects age groups differently, if such differentiation is based upon reasonable factors other than age.

(b) This exception does not apply to the use of an explicit age distinction, but to conduct that has the effect of differentiating among age groups. This exception applies when the factor (other than age) upon which the recipient's action is based bears a direct and substantial relationship to the normal operation of or achievement of a statutory objective of the program or activity.

§ 42.714 Special benefits.

If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 42.712.

§ 42.715 Burden of proof regarding exceptions.

The burden of proving that an age distinction or other action falls within the exceptions described in § 42.712 and § 42.713 is on the recipient. This allocation of the burden of proof applies in proceedings by the Department to enforce the Act.

§§ 42.716–42.719 [Reserved]

DUTIES OF RECIPIENTS

§ 42.720 General responsibility.

Regarding any program or activity subject to this subpart, the recipient has primary responsibility to ensure compliance with the Act and this subpart. The recipient also has responsibility to maintain records, provide information, and to afford access to its records to the Department to the extent required to determine whether it is in compliance with the Act.

§ 42.721 Notice to subrecipients.

Any recipient that receives federal financial assistance from the Department and extends such assistance to subrecipients shall give its subrecipi-

28 CFR Ch. I (7–1–05 Edition)

ents written notice of their obligations under this subpart.

§ 42.722 Recipient assessment of age distinctions.

(a) As part of a compliance review under § 42.730 or complaint investigation under § 42.731, the Department may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving federal financial assistance from the Department to assess the recipient's compliance with the Act.

(b) Whenever a recipient assessment indicates a violation of the Act and this subpart, the recipient shall take corrective action.

§ 42.723 Compliance information.

(a) Upon request by the Department, a recipient shall make available to the Department information necessary to determine whether the recipient is complying with this subpart.

(b) Each recipient shall permit reasonable access by the Department to the recipient's facilities, books, records and other sources of information concerning the recipient's compliance with this subpart.

§ 42.724 Remedial and affirmative action.

(a) If the Department finds that, in violation of this subpart, a recipient has discriminated on the basis of age, the recipient shall take remedial action that the Department considers necessary to overcome the effects of the discrimination.

(b) Even in the absence of a finding of discrimination, a recipient, in administering a program or activity, may take steps to overcome the effects of conditions that resulted in limited participation on the basis of age.

§ 42.725 Assurance of compliance.

Each recipient of federal financial assistance from the Department shall sign a written assurance as specified by the Department that it will comply with this subpart in its federally assisted programs or activities.